

***United States Court of Appeals  
for the Second Circuit***



**SUPPLEMENTAL  
APPENDIX**





76-7539

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P/S

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

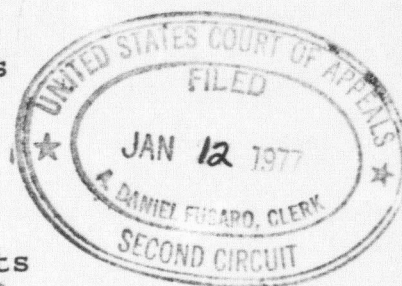
ADRIANA SANCHES, ET AL

Plaintiffs-Appellees

v.

EDWARD MAHER, ET AL

Defendants-Appellants



ON APPEAL FROM AN ORDER OF THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

SUPPLEMENTAL APPENDIX TO BRIEF OF APPELLANT

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IN THE UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF CONNECTICUT

ADRIANA SANCHEZ, et al.,	)	
	)	
Plaintiffs	)	CIVIL ACTION NO. 15732
	)	
v.	)	MOTION OF DEFENDANT HEW
	)	TO ENFORCE STIPULATION
NICHOLAS NORTON, et al.,	)	
	)	
Defendants	)	
	)	

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For the reasons set forth in the accompanying Memorandum in Support of Defendant HEW's Motion to Enforce Stipulation, it is requested that this Court order the Defendant, Connecticut Department of Social Services to comply with the terms and conditions of the accompanying Proposed Order.

Respectfully submitted,

H. Stephen Halloway  
Attorney  
Department of Justice

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Peter C. Dorsey  
United States Attorney

By: 

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Assistant United States Attorney



Deposition of Nicholas Norton, Page 6-8 (2-5-74)

Q. In your opinion, is it necessary for the Connecticut Welfare Department to provide services to some Spanish speaking Puerto Ricans in Spanish?

A. Yes.

Q. Is it your opinion that the Connecticut Welfare Department in order to serve Spanish speaking Puerto Rican clients has to have a Spanish speaking capability among its workers?

A. Yes.

Q. In your opinion, does the Connecticut Welfare Department need additional Spanish speaking employees at the present time?

A. Yes.

Q. Have you directed anyone working under you to ascertain how many additional Spanish speaking workers are necessary?

A. Yes.

Q. Who was that?

A. Mrs. Frew.

Q. When did you give this direction to Mrs. Frew?

A. That instruction actually is a continuing event in which over a period of at least two years the Department has been analyzing needs for a variety of Spanish speaking personnel and classes of personnel and seeking to hire additional personnel as needs were found.



Q. Has Mrs. Frew reported to you as to how many additional Spanish speaking workers you need?

A. No, not in specific terms.

Q. Do you have any opinion at the present time how many additional Spanish speaking employees are needed by the Connecticut Welfare Department?

A. It is my impression that we have an approximate need of ten general purpose workers in various capacities and additionally for approximately ten Social Workers with a Spanish speaking capability.

MR. MacGREGOR: May I have that answer read back?

(Whereupon, the last answer was read by the Court Reporter.)

BY MR. PASSEK:

Q. The phrase you used, "General purpose workers," that is not a specific job classification, correct?

A. That is correct. This could be Interpreters or Typists or Clerks.

Q. How did you arrive at the figures that you just gave, ten additional general purpose workers and approximately ten Social Workers with Spanish speaking capability?

A. Generally, in response to identification of need made by District Directors who advise me or in most cases Mrs. Frew that in order to provide, for example, an adequate ability to receive visitors or phone calls, they feel the need of an additional per-



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son, and it is my general impression that our finding is that we should have seventy or eighty persons in a variety of classes throughout the State in order to meet these needs as observed by our District Directors and their staff.

Q. Has any plan been worked out that is in writing at the present time as to how the Welfare Department is planning to or is in the process of locating the additional twenty workers that you have referred to?

A. I don't know.

Q. Who has responsibility in your opinion to fill the need which you have just identified?

A. Ultimately, I do.

Q. That is in your capacity as Commissioner?

A. Yes.

Q. In your capacity as Commissioner, what steps have you taken to fill the need that you have already described?

A. I have directed Mrs. Frew over a period of time to respond in her capacity as administrator of our personnel activities to seek to hire persons with a Spanish language capability to be able to make assignments in the various Districts as their needs have been identified.

Transcript, Page 15 (4-19-76)

MR. KOPLAN: For the record, I tendered to counsel for the State of Connecticut, HEW Exhibits 1, 2, and 3;



Exhibit 1 being the 1974 report submitted by the State of Connecticut; Exhibit 2 being the 1975 report submitted by the State; and Exhibit 3 being a letter dated August 15, 1975, from Commissioner Maher to John Bynoe.

MR. MAC GREGOR: I have no objection to this letter, your Honor.

THE COURT: That's exhibit 3.

MR. KOPLAN: Exhibit 3.

THE COURT: Full exhibit.

(Exhibit 3 received in evidence.)

Transcript, Page 16-17 (4-19-76)

I think in our recent pleading we have listed paragraphs from the letter and compare it to paragraphs in the stipulation, and what you find is that what Commissioner Norton asks for is what he got, and so for that purpose -- for purposes of this hearing again, I think it would be useful to have this letter, although it is part of the record in the case, admitted as an exhibit, and I so move Government's Exhibit No. 4 for Identification, a letter dated March 29, 1974, into evidence, again under the provisions of 28 USC 1733 B.

MR. MAC GREGOR: I have no objection.

THE COURT: Very well. Exhibit 4.

(Government's Exhibit 4 received in evidence.)



Transcript, Page 36-37 (4-19-76)

BY MR. GATES:

Q. Mr. MacGregor, apparently there is the main contention here this morning by HEW that the ten additional all-purpose workers were to be hired plus fill all the vacancies involved, that is, at the time before the stipulation was filed on June 10th, did anyone from HEW or their attorneys discuss this business about hiring ten additional vacancies that--

A. No, it was never discussed with me, with either of the attorneys from the Justice Department, Mr. Aloris and Mr. Pascik.

Q. Apparently the letter that was introduced this morning was by Mr. Maher, was in the same understanding you had as far as Commissioner Norton was concerned?

A. Mr. Maher was not with the department. He didn't come into the department until sometime in February of 1975, and the stipulation was as of June 10, 1974.

Q. Was this filling of vacancies plus hiring ten additional employees discussed with Commissioner Norton before the stipulation was signed and filed?

A. No, we never discussed it and in his letter, Exhibit 4, HEW Exhibit 4, he never discussed vacancies and I could find no letters from Mr. Norton before June, 1974, in which he discussed they would hire ten more all-purpose workers plus fill vacancies.

I can't find anything in my file.



Transcript, Page 41-42 (4-19-76)

THE COURT: Ordinarily, I would permit cross-examination, but I have stated for the record the only purpose of this was to permit the State of Connecticut to make an offer of proof for another forum. The Court is just absolutely satisfied that the movant's interpretation of the stipulation is a correct one, and Commissioner Maher's interpretation is a correct one, and I really see no purpose in pursuing that avenue any further.

I think the record is clear on how I base my conclusion and, of course, I refer not only to oral arguments, but also to the moving papers.

Transcript, Page 167 (4-27-76)

THE COURT: There are several interpretations of that stipulation, and I am adopting the Commissioner's interpretation set forth in his August 15th, 1975 letter, and all I want to know is in his opinion, has he complied, and he said yes, he has, at least as of February, '76.

MR. MacGREGOR: And he's also said that he thought he -- he complied -- in fact, the stipulation did not contain that he had to fill any vacancies he thought he had complied in '75, that he had complied in hiring, that's also his testimony.

THE COURT: Well, my mind is open on the CETA and the other workers, but it's -- right about now it is closed on this vacancy business. Ten additional workers doesn't mean filling vacancies. It means you hire ten more because your positions that you now have were inadequate.



Transcript, Page 177-181 (4-27-76)

THE COURT: Commissioner, may I ask you this?

BY THE COURT:

Q. I am in receipt of a document that makes this allegation, and I want to ask you if you affirm or deny:

"Commissioner Maher wrote Mr. Bynoe on December 31, 1975, and stated that seventy-seven bilingual, all-purpose workers, seven less than required by the stipulation, and five social workers, five less than required by the stipulation, had been hired. He stated that full compliance with the HEW/CWD stipulation had not been achieved because of difficulties in recruiting Spanish-speaking candidates because of a State hiring freeze and layoffs due to severe budgetary situation and because of delays in the State personnel department."

Did that happen?

A. Yes, sir.

Q. All right. So at least on December 31, 1975, you had a full understanding that to comply with the stipulation you had to hire seven more all-purpose workers and five social workers, but that you were unable to because of various reasons?

A. At that point in time, your Honor, now, if I may --

Q. Yes.



A. -- that was the point in time when I entered this situation on a personal basis. I subsequently directed our deputy commissioner and others in our department to do a number of things that had not been done before by way of searching out Spanish-speaking potential candidates and appointing them, and led to the conclusions that I've stated before in February that by that point in time, we had, in fact, met that requirement in our department, and although I can't speak definitely for the Department of Children, Youth Services, it was my understanding that at that point in time, February of 1976, the Department of Children, Youth Services had come within one or two of the total.

Q. All right. So it is fair for me to say, at least, it was your impression that, in the middle of February, 1976, there were eighty-four bilingual, all-purpose workers and ten social workers hired or within the department?

A. Yes, that is correct.

Q. And you say Miss Packard can back that up with facts and figures and charts and what have you?

A. Yes, and she -- incidentally, I think -- was the source of preparation of the material in December, and so I think can speak for this.

Q. Testing your recollection again, at any time did anyone bring to your attention after you wrote what you said you did that you had miscalculated, that your interpretation of the stipulation was incorrect, and to send another letter withdrawing your letter of December 31st of '75, or anything of the sort?

A. Yes. Well, you said a lot of different things in that one sentence.



Q. All right.

A. I never wrote another letter. I was never advised to write another letter, but in our review of the situation two days ago, we discussed different interpretations of the stipulation.

Q. That was two days ago?

A. Yes.

Q. You see, this memorandum that was given to the Court, it was filed January 19th, 1976, so my question is: up until two days ago and since December 31, 1975, you never received a call from counsel or from anyone else directing your attention to your alleged misunderstanding of the stipulation, is that correct?

A. That's correct.

Q. On the one hand, you didn't call counsel, but counsel didn't call you?

A. That's true.

Q. Up until two days ago?

MR. MacGREGOR: I think I'd object to your Honor's question unless you said that I saw a copy of that letter that's the question.

THE COURT: Mr. MacGregor, if you don't read memoranda filed with the Court, and I assume you received copies -- now, if you didn't receive a copy, I'll have to score counsel for HEW.

MR. MacGREGOR: Well, I think your Honor will agree that that was filed after the letter was written. I'm talking about the time the letter was written.



THE COURT: I don't want to get involved with colloquy with you, but if you read on January 19th or soon thereafter the Commissioner had completely misinterpreted a stipulation --

MR. MacGREGOR: That's what we're here for, your Honor.

THE COURT: -- I shouldn't wait, and he shouldn't wait two days before a hearing before someone let's him know, and I do notice here that this memorandum was sent to Mr. Francis J. MacGregor, Assistant Attorney General, Hartford, Connecticut.

But, in any event, except for what you learned two days ago, which, to me, is irrelevant, if you are of the opinion that you have complied with my interpretation of the stipulation, which is your interpretation as of August 15th, 1975 --

A. Uh-huh.

Q. Do we agree, at least, on that?

A. Yes. As a matter of fact, your Honor, that's why I really wasn't concerned about the problem.

Transcript, Page 182-185 (4-27-76)

THE COURT: All right.

MR. MacGREGOR: Your Honor seems to have already decided before -- it before any -- was on, has a preconceived -- of what the base figure is and what he should have done.



THE COURT: Yes. I have -- I'm drawing to that conclusion, and I am drawing it rapidly. As I look back, I think the Court is fully justified in drawing that conclusion. I adopt the Commissioner's interpretation of the stipulation, which does conform to HEW, and throughout all these papers and including the Commissioner's statement of December 31, 1975, it indicates that the parties were considering the stipulation in it of the interpretation put on it by the Commissioner and the plaintiffs and HEW.

Moreover, it seems to me just basic logic, that if the plaintiffs instituted this lawsuit just to have vacancies filled, I would have learned about that long before last week. They were -- started this lawsuit and wanted ten additional particular people, and another ten additional. All through this litigation I've always heard the word "additional".

If it was merely filling vacancies, all we had to do was get the comptroller in or get somebody in and say, "Look, get some money and go out and hire these people."

Now, let's not forget one other thing, let's not forget my hearing in November, 1975, when, to the best of my recollection, the State admitted --

MR. MacGREGOR: Oh, I don't know if we admitted anything, your Honor, and I don't know of any transcript of that hearing at all. I think when counsel goes into chambers and discuss it with the Judge off the record, it's off the record.

THE COURT: Oh, absolutely not. It's not on the record, but at that time, the State needed more time to comply with the stipulation. They asked for more time. I gave them more time. Until January. And at no time



during that conversation do I ever remember the State saying there's no need for more time because we've complied. It was always my impression --

MR. MacGREGOR: Well, there's other parts to the stipulation, that's a three-page stipulation, and there's questions of whether what we have to do in the future -- going on a ratio basis of people hired.

THE COURT: I think we could continue this --

MR. MacGREGOR: May I say this, your Honor --

THE COURT: No, I'm cutting you off, because I'm ruling at this point that I accept the interpretation of the stipulation as put on it by HEW and Commissioner Maher, and that's the law of the case.

MR. MacGREGOR: Well, your Honor.

THE COURT: We will proceed from that point on, solely with respect to: has there been compliance with that stipulation as interpreted by Commissioner Maher, the plaintiffs and HEW? The Commissioner has testified that he is satisfied that he can show the Court that as of February, 1976, the State of Connecticut complied with the stipulation as interpreted by him, the Court, the plaintiffs and HEW, and that's the only evidence I want to hear from here on out. I've now ruled. It is the law of the case.

Transcript, Page 192-196 (4-27-76)

MR. MacGREGOR: Before I put Miss Packard on, I'd like to put Mr. Fisher on as a witness.



THE COURT: What can he testify to?

MR. MacGREGOR: Mr. Fisher and myself are probably the only two attorneys -- and he is not a counsel of record, your Honor, he's HEW -- that are familiar with this case from the beginning up till to date, we're the only two attorneys that are presently on the case that were involved in the case when the stipulation was filed.

I wanted to ask him some questions -- and he was present at just about, I would say, every single meeting in which this stipulation was discussed, and he was present in every meeting they had with Mr. Maher, or Mr. Norton, before the stipulation was filed when what was going to go into it was discussed. And maybe we can agree that the questions I ask him he can answer, some of the questions I'm going to ask him is who prepared the stipulation. I think it's important.

MR. KOPLAN: I believe your Honor has ruled.

THE COURT: Yes, I've ruled.

MR. MacGREGOR: Can I ask what the offer of proof is, perhaps, for another forum?

THE COURT: Give me an offer of proof.

MR. MacGREGOR: The first question I was going to ask him was -- I already testified that HEW prepared this stipulation, and I am going to ask him -- and the second thing I was going to ask him --

THE COURT: Why shouldn't the Court believe your testimony?



MR. MacGREGOR: All right. The second thing I was going to ask him, whether he knows whether Health, Education and Welfare had any written communication from Commissioner Norton before the stipulation was filed in which he said he understood that to comply with this stipulation, Connecticut Welfare Department would have to hire ten fluent, all-purpose workers, plus fill all vacancies. The reason I'm asking that, your Honor --

THE COURT: I thought you testified that no one ever mentioned vacancies?

MR. MacGREGOR: That's what I'm going to ask him. Was it ever discussed? It's our claim it never was. As far as I know, it never was, and I will tell you the reason, your Honor.

When codefendant HEW filed their memorandum, they attached a whole bunch of documents. If your Honor bothers to peruse those documents, you'll see that they never raised a question of vacancies until five months and eleven days after the stipulation.

THE COURT: We've been over this.

MR. MacGREGOR: I realize that, your Honor.

THE COURT: The question is how significant is it when someone says ten additional hirings, excluding vacancies, or whether or not it is more significant that it wasn't said, "ten additional vacancies" --

MR. MacGREGOR: Period.

THE COURT: -- ten additional workers, including vacancies. In my opinion, if vacancies were to be included, it would have had to be mentioned. But because it wasn't mentioned indicates that it wasn't part of the --



MR. MacGREGOR: That's right. I agree with you, your Honor, vacancies weren't considered.

THE COURT: So the ten additional workers beyond vacancies --

MR. KOPLAN: Judge, if we had accepted ten people at a time when there were twelve vacancies --

MR. MacGREGOR: Well, this is argument. I'm making an offer of proof. I don't think counsel --

MR. KOPLAN: That's ridiculous.

THE COURT: Just a minute. Mr. McGregor, once in a while you throw in a jab on a thing I ruled on twenty minutes ago. I'm going to allow counsel, because I think it makes a lot of sense --

MR. MacGREGOR: Because I'm just trying --

THE COURT: -- because if they were in court concerned about filling vacancies, they would only talk either about filling vacancies, or maybe one or two more, and I always remember counsel discussing twenty more, fifty more additional workers.

MR. MacGREGOR: When? Though, your Honor --

THE COURT: Throughout the entire course of this litigation.

MR. MacGREGOR: Well --

THE COURT: Now, don't ask me any more questions. I've ruled.

MR. MacGREGOR: Your Honor, can I ask --



THE COURT: I don't want to hear anything more on the Court's ruling. I'm ordering counsel to stay away from that subject.

MR. MacGREGOR: Well, I just -- one question.

THE COURT: No further questions --

MR. MacGREGOR: All right.

THE COURT: -- on what the Court has already ruled on, Mr. MacGregor.

MR. MacGREGOR: Well, can I -- can I ask --

THE COURT: Mr. MacGregor --

MR. MacGREGOR: I'm not asking on that, your Honor.

THE COURT: You will proceed solely on the basis of whether or not the State of Connecticut has complied with the stipulation, according to my ruling, and not another word on anything else.

MR. MacGREGOR: All right. Your Honor, I'm asking you can I ask Mr. Fisher what his understanding of the base figure was --

THE COURT: Commissioner, you may leave the stand. I'll order Miss Packard to take the stand.

THE WITNESS: Thank you.

THE COURT: Thank you, Commissioner, for coming down.

(Witness excused.)

MR. MacGREGOR: Is the Commissioner excused, your Honor?

THE COURT: I've excused the Commissioner.



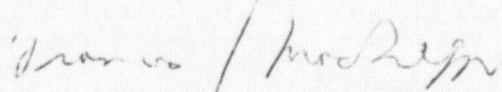
CERTIFICATION

This is to certify that on the 6th day of January, 1977, a copy of the Supplemental Appendix to Brief of Appellant was mailed to the following counsel of record:

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